



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED
Release to Manager, BO Determinations - Cincinnati

DATE: [REDACTED]

SURNAME: [REDACTED]

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

Date:

JAN 31 2002

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(9) of the Internal Revenue Code.

You are a trust formed on [REDACTED]. You are formed for the purpose of providing benefits to the employees of [REDACTED]. You state that you are providing medical, disability, accidental death and dismemberment and nursing home benefits.

The information submitted shows that you will be providing benefits to two employees. You state that two employees are covered by your plan. The covered highly compensated employee is a 100 percent owner of [REDACTED]. You state that you have a five-year participation requirement for your nursing home benefit. You state that your termination benefit is based on length of service.

Section 501(c)(9) of the Code describes a voluntary employees' beneficiary association (VEBA) providing for the payment of life, sick, accident or other benefits to its members or their dependents or designated beneficiaries, and in which no part of its net earning inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-3(a) of the Income Tax Regulations provides that an organization is not described in section 501(c)(9) of the Code if it systematically and knowingly provides benefits (of more than a de minimis amount) that are not permitted by section 1.501(c)(9) of the regulations.

Section 1.501(c)(9)-3(f) of the Regulations describe benefits that nonqualifying other benefits. Deferred compensation is not a qualifying other benefit because deferred compensation is payable by the passage of time, rather than the result of an unanticipated event.

Section 1.501(c)(9)-4(a) of the Regulations states, in part, that no part of the net earnings of an employees' association may inure to the benefit of any private shareholder or individual other than through the payment of benefits permitted by section 1.501(c)(9)-3. Whether prohibited inurement has occurred is a question to be determined with regard to all the facts and circumstances.


Section 1.501(c)(9)-4(b) of the Regulations provides that any payment to any member of disproportionate benefits, where such payment is not pursuant to objective and nondiscriminatory standards, will not be considered a benefit within the meaning of section 1.501(c)(9)-3 of the regulations even though the benefit otherwise is one of the type permitted by that section. For example, the payment to highly compensated personnel constitute prohibited inurement unless the different can be justified on the basis of objective and reasonable standards adopted by the association.

Based on the information submitted, we conclude that you are not a voluntary employees' beneficiary association as that term is used in section 501(c)(9) of the Code.

A section 501(c)(9) VEBA functions primarily as a cooperative device for pooling funds and distributing risks over and benefits to a defined group of employees sharing an employment-related bond. Prohibited inurement arises when a VEBA benefits one or more individuals other than through the performance of functions characteristic of an organization described in section 501(c)(9). Disproportionate benefits to the highly compensated personal unless pay pursuant to an objective and nondiscriminatory standard would be considered as inurement.

The information that you submitted did not establish that your benefits constitute inurement under section 1.501(c)(9)-4(a) of the regulations because effective control of the trust is exercised by the owner-member and the trust functions essentially as a tax-deferred investment fund for the private benefit of the owner-member. For example, the owner-member is empowered to fire the other employee at any time. The functioning of an organization in this manner is inconsistent with and incompatible with the exempt purposes and activities of a voluntary employees' beneficiary association exempt under section 501(c)(9) of the Code in providing benefits to promote the common good and general welfare of a voluntarily-associated group of employees rather than the one employee who is the owner-member. In addition, your termination provision in its present form violate the inurement proscription by being based on years of service. In addition, your long term life benefit violate the inurement proscription for having years for qualification and favoring your owner-member who is the oldest employee.


Accordingly, based on all the facts and circumstances, we conclude that your trust and plan does not qualify for recognition of exemption from federal income tax under


section 501(c)(9) of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio EP/EO key district office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn:  T:EO:RA:T:2
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

cc: 
 